

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Rogan Brothers Sanitation, Inc. and Local 813, International Brotherhood of Teamsters. Case 2–CA–39528**

May 11, 2010

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER  
AND BECKER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on October 9, 2009, the General Counsel issued the complaint on December 30, 2009, against Rogan Brothers Sanitation, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer. On February 19, 2010, the General Counsel filed a Petition for Summary Judgment with the Board and Memorandum in Support of Petition.<sup>1</sup> Thereafter, on February 22, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by the Regional Office by January 12, 2010, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated January 20, 2010, notified the Respondent that unless an answer was received by January 29, 2010, a motion for default judgment would be filed. On February 1, 2010, the Region granted the Respondent's request for an extension of time in which to answer the complaint to February 3, 2010. Despite this extension, however, the Respondent failed to file an answer.

<sup>1</sup> On February 25, 2010, the General Counsel filed a corrected Petition and a corrected Memorandum entitled "Motion for Default Judgment" and "Memorandum in Support of Motion for Default Judgment."

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a New York corporation, with an office and place of business located at 1014 Saw Mill River Road, Yonkers, New York, has been engaged in the business of refuse and garbage pick-up and disposal, including at private homes and residences. Annually, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000, and purchased and received at its place of business goods valued in excess of \$5000 from suppliers of fuel and truck and automotive parts and materials located within the State of New York, each of which other enterprises has received these goods directly from points outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, Local 813, International Brotherhood of Teamsters, is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent, acting in its behalf.

|                 |                 |
|-----------------|-----------------|
| James Rogan     | President       |
| Michael Vetrano | General Manager |

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All chauffeurs, helpers, mechanics, and welders employed by Respondent but excluding all employees not eligible for membership in the Union in accordance with provisions of the Labor Management Relations Act of 1947, as amended.

Since about December 1, 2001, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then, the Union has been recognized as such by the Respondent. This recognition has been embodied in a series of collective-bargaining agreements, the most recent

of which was effective from December 1, 2005, through November 30, 2008.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about August 27, 2009, the Respondent has failed and refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of the unit, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing, since about August 27, 2009, to bargain with the Union, we shall order the Respondent, on request, to meet and bargain with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody the understanding in a signed agreement.

#### ORDER

The National Labor Relations Board orders that the Respondent, Rogan Brothers Sanitation, Inc., Yonkers, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with Local 813, International Brotherhood of Teamsters, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All chauffeurs, helpers, mechanics, and welders employed by Respondent but excluding all employees not eligible for membership in the Union in accordance with provisions of the Labor Management Relations Act of 1947, as amended.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Yonkers, New York, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 27, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 11, 2010

\_\_\_\_\_  
Wilma B. Liebman, Chairman

\_\_\_\_\_  
Peter C. Schaumber, Member

\_\_\_\_\_  
Craig Becker, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with Local 813, International Brotherhood of Teamsters, as the exclusive collective-

bargaining representative of our employees in the following unit:

All chauffeurs, helpers, mechanics, and welders employed by us but excluding all employees not eligible for membership in the Union in accordance with provisions of the Labor Management Relations Act of 1947, as amended.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

ROGAN BROTHERS SANITATION, INC.